

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8536 OF 2018

Shri. Satish Nishikant Phappe,	]
Age: 49 years, Occu: Service,	]
R/o: 52/12, Chaitanya Apartment,	]
Flat No.303, Market Yard, Kolhapur	]..Petitioner

Versus

1] The State of Maharashtra,	]
Through, the Secretary,	]
Urban Development Department,	]
Mantralaya, Mumbai.	]
2] The Divisional Caste Scrutiny	]
Committee No.2,	]
Dr. Babasaheb Ambedkar,	]
Social Justice Bhavan, 2 nd floor,	]
Cichare Mal, Kolhapur.	]
3] The Commissioner,	]
Kolhapur Municipal Corporation,	]
Kolhapur	]..Respondents

Mr. S. R. Ganbavale, Advocate for the Petitioner.
Mr. P. G. Sawant, AGP for Respondent Nos.1 & 2.
Mr. Kirankumar Phakade I/by Mr. S. A. Mane, Advocate for Respondent No.3.

**CORAM : B. R. GAVAI &
N. J. JAMADAR, JJ.
DATE : 14th FEBRUARY, 2019**

ORAL JUDGMENT (Per N. J. Jamadar, J)

1] Rule. Rule made returnable forthwith and by consent of

the parties, heard finally.

2] In this Petition, the challenge is to the order dated 26th December 2017 passed by Respondent No.2 - Scrutiny Committee, whereby claim of the Petitioner of belonging to “Mahar” Scheduled Caste has been invalidated.

3] It is the claim of the Petitioner that there are pre-constitutional documents, which indicate that the Petitioner belongs to “Hindu Mahar” Scheduled Caste in the nature of birth certificates of the Petitioner's father, uncle and great paternal aunt. It is further submitted that Respondent No.2 – Scrutiny Committee has invalidated claim of the Petitioner also on the ground that the Petitioner is not resident of State of Maharashtra as the documents indicate that the Petitioner's father was originally resident of Mangur, Taluka Chikodi, District Belgaum. It is submitted that Respondent No.2 – Scrutiny Committee has not taken into account the fact that the said place formed part of the erstwhile State of Bombay, prior to re-organization of the States.

4] We have heard Mr. S. R. Ganbavale, learned counsel for

the Petitioner and Mr. P. G. Sawant, learned AGP for Respondent Nos.1 & 2.

5] Upon perusal of the impugned order, it becomes evident that two factors weighed with Respondent No.2 – Scrutiny Committee to invalidate claim of the Petitioner. The first is, that there is no document to show that the Petitioner or his father were residents of State of Maharashtra prior to 10th August 1950. The second ground is that vigilance enquiry revealed that the entry regarding the School Leaving Certificate of the father of the Petitioner did not find place in the register maintained at the School, wherein name of one Madar Rajeso Bepari was shown. Thus, Respondent No.2 – Scrutiny Committee observed that despite the said fact having been communicated to the Petitioner, the later did not offer any explanation for the same. Thus, Respondent No.2 – Scrutiny Committee negated the claim of the Petitioner.

6] We have perused the explanation offered by the Petitioner. It was fairly conceded by the learned counsel for the Petitioner that no plausible explanation could be offered regarding the said observation in the vigilance report. However, learned

counsel for the Petitioner pointed out that there are other documents, which indicate that uncle of the Petitioner and great paternal aunt were members of “Hindu Mahar” Scheduled Caste. Respondent No.2 – Scrutiny Committee has not taken into account those documents.

7] It was further pointed out that grandfather of the Petitioner had married a *Devdasi* and because of that middle name of the father of the Petitioner was shown as Shrimati (Aai) Phappe.

8] As against this, the learned AGP supported the impugned order.

9] It is evident that Respondent No.2 – Scrutiny Committee has proceeded on an incorrect premise so far as place of residence of father of the Petitioner is concerned. The fact that Mangur, Taluka Chikodi, District Belgaum was part of the State of Bombay before re-organization has not been properly considered by Respondent No.2 – Scrutiny Committee. In view of pronouncement of Hon'ble Apex Court in the case of **Sudhakar Vithal Kumbhare**

Vs. State of Maharashtra¹, it is now well recognized that if both the places i.e. the place from where the claimant has migrated and the place to which he has migrated, formed part of one and the same State before re-organization and the Caste/Tribe is recognized in both the States after the States re-organization, the claim cannot be rejected on the ground that the claimant is a migrant since the place of origin now does not form part of the State.

10] On merits of the matter, we find that the Vigilance Enquiry report categorically records that the enquiry with the local residents revealed that the Petitioner belonged to Hindu Mahar, Scheduled Caste. As regards the existence of pre-constitutional documents, which vouch for the veracity of the claim of the Petitioner, it seems that Respondent No.2 – Scrutiny Committee has not considered the entry in the birth register of village Mangur, Taluka Chikodi, District Belgaum, of the year 1921, in respect of birth of *Hausi Gandhari Bap Rama Mahar*, the great paternal aunt of the Petitioner. It has been the consistent claim of the Petitioner that Hausi was the sister of his grandfather Ganpati, who had initially married a *Devdasi* i.e. Shrimat Phappe, and by whom the Petitioner's

1 (2004) 9 SCC 481.

father Nishikant was born, and subsequently, Petitioner's grandfather Ganpati married Bahinabai and by whom Ganpati had five sons and a daughter, whose caste has been recorded as Mahar. If the entry in birth register of the year 1921, showing the great paternal aunt Hausi as a member of Mahar caste, is believed, then the Petitioner's claim becomes sustainable.

11] In the backdrop of the favourable vigilance report and aforesaid pre-constitutional document and the consistent claim of the Petitioner, we are of the view that the matter needs to be further examined by the Scrutiny Committee. Thus, we are inclined to remit the matter to Respondent No.2 – Scrutiny Committee for a fresh decision after providing an opportunity of hearing to the Petitioner.

12] The Petition, therefore, stands allowed in the following terms :-

- I] The impugned order dated 26th December 2017 passed by Respondent No.2 – Scrutiny Committee invalidating caste claim of the Petitioner stands quashed and set aside.

II] The matter stands remitted to Respondent No.2 – Scrutiny Committee for a fresh decision, in accordance with law, after providing an opportunity of hearing to the Petitioner.

III] Respondent No.2 – Scrutiny Committee shall make an endeavor to decide claim of the Petitioner as early as possible and, in any event, within a period of six months from the date of receipt of the order.

IV] No coercive action be taken against the Petitioner till the decision of the caste claim by Respondent No.2 – Scrutiny Committee and, in the event the decision is adverse to the Petitioner, for a period of three weeks from the date of the communication of such order to the Petitioner.

[N. J. JAMADAR, J.]

[B. R. GAVAI, J.]